

On March 29, 1995, the Commission issued an Order for and Notice of Hearing for six regional evidentiary hearings to be held at various locations throughout the state of South Dakota. Notice of said hearings was given to the public by newspaper publications and radio announcements; personal notice was given to all parties to the docket. Pursuant to said Order of the Commission, and subsequent amended Orders, the following regional evidentiary hearings were held:

1. April 17, 1995, at the City Auditorium, 212 Main Street, Mobridge, South Dakota, for public testimony on the sale of the Selby, Gettysburg, Roscoe, Onida, Bowdle, Morristown, Timber Lake, Lemmon, Eureka, Ipswich, McIntosh, and Mobridge exchanges.
2. April 18, 1995, at the Community Center, 1401 LaZelle, Sturgis, South Dakota, for public testimony on the sale of the Nisland, Newell, and Hermosa exchanges.
3. May 1, 1995, at the St. Mary's Hall, 305 West Third, Winner, South Dakota, for public testimony on the sale of the Winner, Burke, Bonesteel, Reliance, Murdo, Lake Andes, Wagner, Gregory, Witten, Clearfield, Presho, and Platte exchanges.
4. May 3, 1995, at the Lake Area Technical Institute, Student Lounge, 230 11th Street NE, Watertown, South Dakota, for public testimony on the sale of the Webster, Clark, Florence, Hayti, Bradley, Willow Lake, Waubay, Castlewood, Summit, Peever, Veblen, Wilmot, Howard, Oldham, Revillo, and South Shore exchanges.
5. May 4, 1995, at the Johnson's Fine Arts Center, Room 134, Northern State University Campus, Aberdeen, South Dakota, for public testimony on the sale of the Britton, Pierpont, Roslyn, Wessington Springs, Mellette, Bristol, Frederick, Hecla, Doland, Wolsey, and Cresbard exchanges.
6. May 5, 1995, at the Alcester High School Gymnasium, Fifth and Iowa, Alcester, South Dakota, for public testimony on the sale of the Marion, Tyndall, Centerville, Viborg, Lesterville, Tabor, Hudson, Tripp, Parkston, Salem, Alcester, Bridgewater, and Canistota exchanges.

On May 1, 1995, U S WEST and the Buyers filed an amended Joint Application. In its amended Joint-Application, U S WEST and the Buyers stated that since the filing of the Joint Application in December, "the sale of several exchanges to certain buyers has been reevaluated by the Buyers." They requested the following changes:

1. In the Agreement with Golden West Telephone Properties, Inc., delete in Exhibit A the Newell exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly;
2. In the Agreement with West River Cooperative Telephone Company, Inc. (Bison), delete in Exhibit A the McIntosh exchange and add the Newell

and Nisland exchanges, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly; and

3. In the Agreement with Cheyenne River Sioux Tribe Telephone Authority, delete in Exhibit A the Nisland exchange and add the McIntosh exchange, and change the purchase price reflected in Paragraph 1.3 of the Agreement accordingly.

Due to the amended application, the Commission set a new intervention deadline of May 12, 1995. Subsequently, the city of McIntosh and Corson County applied for and were granted intervention. Because the application had been amended, the Commission held another public hearing on May 25, 1995, at the McIntosh School Gymnasium, McIntosh, South Dakota, for public testimony.

At each regional evidentiary hearing, representatives from U S WEST and each purchasing company were present to testify and were available for cross-examination.

On April 5, 1995, the Commission issued a Notice of Hearing setting the final hearing for June 1-2, 1995. All prefiled testimony was required to be filed by May 25, 1995. A pre-hearing conference was held on May 22, 1995.

The final hearing was held on June 1-4, 1995. At said final hearing, 42 witnesses testified and were available for cross-examination, 126 exhibits were offered and received into the record at the hearing, and an additional 19 exhibits were filed by June 19, 1995, which was the deadline set by the Commission for late-filed exhibits.

On June 7, 1995, the Commission issued a Post-hearing Order requesting briefs on certain issues and allowing the submission of Proposed Findings of Fact and Conclusions of Law. On June 19, 1995, the parties submitted late-filed exhibits. On June 23 and July 3, 1995, the parties filed their post-hearing briefs and Proposed Findings of Fact and Conclusions of Law.

On July 13, 1995, at a duly noticed meeting, the Commission unanimously voted to not approve the sale of the Timber Lake exchange to Cheyenne River Sioux Tribe Telephone Authority (CRSTTA) which proposed to purchase the Timber Lake exchange through its subsidiary, Owl River Telephone, Inc. (Owl River). With regard to the sale of the Timber Lake exchange, in conjunction with the sale of all the other exchanges, the Commission has reviewed all exhibits presented at the seven regional evidentiary hearings, and the final hearing occurring in Pierre, and has considered all testimony provided. The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

FINDINGS OF FACT

1. U S WEST is a Colorado corporation providing local exchange telecommunications service, interexchange carrier access, intraLATA interexchange telecommunications services, and other telecommunications services throughout South Dakota.

2. On or about December 7, 1994, U S WEST entered into purchase agreements for the sale of 67 local exchanges with 20 local exchange telecommunications companies. On December 20, 1994, U S WEST and the Buyers filed a Joint Application for a Commission Declaration on the Sale and for Proper Accounting Treatment of any Gain. Exhibit 29. U S WEST and the Buyers filed all 20 purchase agreements along with the Joint Application. Exhibits 31-50. One of the purchase agreements entered into was between U S WEST and the Buyer. Exhibit 32.

3. CRSTTA is a telecommunications company and a division of the Cheyenne River Sioux Tribe. CRSTTA currently provides telecommunications services in South Dakota. Exhibit 22 at page 119.

4. Owl River is a wholly-owned subsidiary of CRSTTA incorporated under the laws of the Cheyenne River Sioux Tribe. Exhibit 22 at page 119. Owl River has no license to do business in the state of South Dakota. Exhibit 22 at pages 145-146.

5. The purchase agreement entered into between CRSTTA and U S WEST states as follows:

Seller and Buyer agree to promptly file any required application and to take such reasonable action as may be necessary or helpful (including, but not limited to, making available witnesses, information, documents, and data requested by the PUC) to apply for and receive approval by the PUC for the transfer of Assets and Authorities to Buyer.

Exhibit 32, Section 6.3, subparagraph D.

6. In the Joint Application filed with the Commission on December 20, 1994, U S WEST and CRSTTA had entered into a purchase agreement where U S WEST proposed to sell the Nisland, Timber Lake, and Morristown exchanges to CRSTTA.

7. A duly noticed public hearing was held at Mobridge, South Dakota, on April 17, 1995, at the City Auditorium, beginning at 8:00 p.m., concerning, along with other sales, the sale of the Timber Lake, Morristown, and McIntosh exchanges. At the time of the hearing, West River Cooperative Telephone, Inc. (West River) was the proposed buyer of the McIntosh exchange.

8. A duly noticed public hearing was held at Sturgis, South Dakota, on April 18, 1995, beginning at 7:00 p.m. M.D.T. concerning, along with other sales, the sale of the Nisland exchange. At the hearing, the Buyers announced that CRSTTA would no longer be purchasing the Nisland exchange. Instead, West River proposed to purchase the Nisland and Newell exchanges and CRSTTA proposed to purchase the McIntosh exchange which West River had originally intended to purchase. Exhibit 23 at pages 5-6.

9. The amended Joint Application setting forth the changes in the buyers of the Nisland, Newell, and McIntosh exchanges was filed with the Commission on May 1, 1995. Exhibit 30. Due to the amendment of the Joint Application, the Commission set a new intervention deadline of May 12, 1995. The city of McIntosh and Corson County applied

for and were granted intervention. The Commission held another public hearing on May 25, 1995, at the McIntosh School Gymnasium, in McIntosh.

10. On June 1-4, 1995, in Pierre, South Dakota, a final hearing was held concerning all of the proposed exchange sales. Members of the public testified in opposition to and in support of the sale of the Timber Lake exchange to CRSTTA. Transcript of Pierre Hearing at pages 707-727, 738-779. The two main concerns of the public who testified in opposition to the sale were the lack of Commission oversight and the loss of tax dollars.

11. The Timber Lake exchange is located within the boundaries of the Cheyenne River Sioux Reservation and the Standing Rock Sioux Reservation. Exhibit 93.

12. CRSTTA maintains that if the sale of the Timber Lake exchange to CRSTTA were allowed, the Commission would lose all regulatory control over the Timber Lake exchange. Exhibit 22 at pages 131-132.

13. CRSTTA does not pay gross receipts taxes on the telephone exchanges it currently operates. Exhibit 22 at page 123. J. D. Williams, manager of CRSTTA, stated that the state "may impose its gross receipts tax on the income generated from sales to non-Indians and non-members of the area. However, it has no mechanism whereby to force the tribe to collect the tax. The tribe has a sales tax agreement with the state and a similar arrangement may be possible with respect to collecting a gross receipts tax." Exhibit 22 at page 132.

14. CRSTTA proposed a Memorandum of Understanding which provided that CRSTTA would follow the same regulatory procedures found under South Dakota law. Exhibit 145. However, pursuant to that Memorandum of Understanding, the Commission was given no regulatory oversight.

15. The Commission lacks the authority to enter into a tax agreement with a tribal entity. No tax agreement was reached with the state of South Dakota by the close of the record on June 19, 1995.

16. CRSTTA has refused to waive its sovereign immunity in order to provide the Commission with its statutorily mandated regulation of telecommunications services provided by a telecommunications company within the state of South Dakota.

17. CRSTTA has refused to waive its sovereign immunity with regard to the gross receipts tax agreement that it had proposed to enter into negotiations with the state of South Dakota.

18. Local exchange service provided by a telecommunications company is classified as a noncompetitive service. SDCL 49-31-1.1.

19. The South Dakota State Legislature has charged the Commission with important duties in overseeing telecommunications services within the state of South Dakota and

has further vested in the Commission significant powers to protect telecommunications subscribers. SDCL Chapters 49-1, 49-13, and 49-31.

20. If the sale of the Timber Lake exchange to CRSTTA were approved, CRSTTA would not recognize the Commission as having regulatory authority over CRSTTA and the Timber Lake exchange. Exhibit 22 at pages 131-132.

21. Pursuant to SDCL 49-1-17, the Commission is prohibited from approving a sale which would result in the delegation or transfer of powers and duties vested in the Commission. Any delegation of such powers is classified as a Class 2 misdemeanor.

22. Since CRSTTA maintains that there is no enforcement mechanism that would require CRSTTA to pay gross receipts taxes, approval of the sale would also result in the loss of significant tax revenue for cities, counties, and school districts located within the Timber Lake exchange. Exhibits 96, 142; Exhibit 28 at pages 126-129; Transcript of Pierre Hearing at pages 707-727. In effect, in addition to delegating its own authority, the Commission's action could also result in relinquishing the enforcement authority of the state of South Dakota to collect gross receipts taxes.

23. As CRSTTA has declined to waive its sovereign immunity, the Commission similarly declines to give up its jurisdiction.

24. The Commission rejects the proposed findings of fact and conclusions of law submitted by the parties.

From the foregoing Findings of Fact, the Commission now makes its:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over U S WEST and CRSTTA and the sale of the Timber Lake exchange to CRSTTA pursuant to SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, and 49-31-59. At the final hearing CRSTTA contested the jurisdiction of the Commission pursuant to SDCL 49-31-59 by claiming that it was an ex post facto law. This argument is without merit since ex post facto applies only to criminal laws and laws that assess penalties. Delano v. Pettys, 520 N.W.2d 606, 608 (S.D. 1994). Moreover, the Joint Application was amended on May 1, 1995, which was after the passage of SDCL 49-31-59. In addition, the purchase agreement entered into between U S WEST and CRSTTA specifically provides that U S WEST and CRSTTA would cooperate in obtaining Commission approval for the transfer of assets and authority to CRSTTA. Finally, CRSTTA did not contest, at any of the hearings, the jurisdiction of the Commission pursuant to the other statutes under which the Commission asserts its jurisdiction.

2. The hearings held by the Commission relative to this matter were contested case hearings pursuant to SDCL Chapter 1-26.

3. The Commission finds that the approval of the sale of the Timber Lake exchange to CRSTTA would constitute an improper delegation of authority pursuant to SDCL 49-1-17 and, therefore, this Commission has no authority to approve the sale of the exchange.
4. The Commission lacks the authority to enter into a tax agreement with a tribal entity.
5. The Commission finds that approval of the sale of the Timber Lake exchange would have significant, adverse tax consequences to the taxpayers located in the cities, counties, and school districts within the Timber Lake exchange due to CRSTTA's position that the state lacks the authority to enforce the collection of taxes on the Reservation.
6. The Commission rejects the proposed findings of fact and conclusions of law submitted by the parties.

Pursuant to SDCL Chapter 1-26, the Commission hereby enters its final decision in this docket. It is therefore

ORDERED that the sale of the Timber Lake exchange to the Cheyenne River Sioux Tribe Telephone Authority, through its subsidiary Owl River Telephone, Inc. is not approved; and it is

FURTHER ORDERED that the proposed findings of fact and conclusions of law submitted by the parties are rejected.

Pursuant to SDCL 1-26-32, this Order becomes effective 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 31st day of July, 1995.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Kenneth Stofferahn</u>
Date: <u>8-1-95</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Kenneth Stofferahn
KENNETH STOFFERAHN, Chairman

James A. Burg
JAMES A. BURG, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

CRST RESOLUTION NO. 180 -94-CR

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians, having accepted the provisions of the Act of June, 1934 (48 Stat. 984); and

WHEREAS, the Tribe, in order to establish its tribal organization; to conserve its tribal property; to develop its common resources; and to promote the general welfare of its people, has ordained and established a Constitution and By-laws; and

WHEREAS, the Cheyenne River Sioux Tribe Telephone Authority (CRTA) was established pursuant to Tribal Ordinance #24, and, under Article I and Article IV of the same, is vested with the power "to acquire, by purchase or otherwise, and to own and maintain and operate telephone and telegraph lines and telephone exchanges within the State of South Dakota;" and

WHEREAS, the CRTA has recently entered into an agreement with other independent telephone companies to purchase McIntosh, Morristown, and Timber Lake telephone exchanges which are located in South Dakota and a small portion of North Dakota from U.S. West which will greatly enhance and expand its current operations on the Reservation and within the State of South Dakota, and which will ultimately derive to the benefit of the Tribe as a whole; and

WHEREAS, the CRTA created a subsidiary corporation, Owl River Telephone, Inc., to operate and manage the new exchanges; and

WHEREAS, Owl River Telephone, Inc. has been duly chartered as a tribal corporation under the laws of the Cheyenne River Sioux Tribe; and

WHEREAS, the Owl River Telephone, Inc. Board of Directors approved Board Resolution #95-05-26-04 to seek approval of an application for a Certificate of Convenience and Necessity to own, construct, maintain, and operate a telecommunications system on the Cheyenne River Sioux Reservation; and

WHEREAS, Owl River Telephone, Inc. has filed with the Tribal Secretary its Application for a Certificate of Convenience and Necessity from the Cheyenne River Sioux Tribe to serve the portion of the Timber Lake exchange which lies within the exterior boundaries of the Cheyenne River Sioux Reservation; and

128
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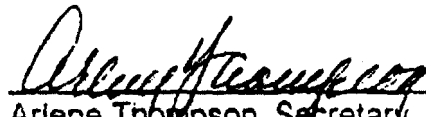
WHEREAS, the Certificate of Convenience and Necessity provides that the Cheyenne River Sioux Tribe has power and authority over utility concerns within the exterior boundaries of the Cheyenne River Sioux Reservation; now

THEREFORE BE IT RESOLVED that a certificate of public convenience and necessity be issued to Owl River Telephone, Inc. authorizing it to construct, maintain, and operate a telecommunications system in the Timber Lake exchange, subject to such change and revision as facts and circumstances may hereinafter require; and.

BE IT FURTHER RESOLVED, that the acquisition of the property and operating rights of US West's Timber Lake exchange by Owl River Telephone, Inc. shall be and is hereby approved.

CERTIFICATION

I, the undersigned, as Secretary of the Cheyenne River Sioux Tribe, certify that the Tribal Council is composed of fifteen (15) members, of whom 11, constituting a quorum, were present at a meeting, duly and regularly called, noticed, convened and held this 1st day of JUNE, 1995, Special Session; and that the foregoing resolution was duly adopted at such meeting by an affirmative vote of 11 for, 0 against, 0 not voting, 4 absent.


Arlene Thompson, Secretary
Cheyenne River Sioux Tribe

Page 420	Page 422
<p>BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA</p> <p>.....</p> <p>IN THE MATTER OF THE SALE OF CERTAIN TELEPHONE EXCHANGES BY U S WEST COMMUNICATIONS, INC. TO CERTAIN TELECOMMUNICATIONS COMPANIES IN SOUTH DAKOTA</p> <p>TC-94-122</p> <p>Kings Inn Pierre, SD June 2, 1995 9:00 o'clock a.m.</p> <p>.....</p> <p>HEARING (Volume II)</p> <p>.....</p> <p>BEFORE: Mr. Ken Stofferahn, Chairman Mr. Jim Burg, Vice-Chairman Ms. Laska Schoenfelder, Commissioner</p> <p>Ms. Rolayne Alts Wiest, General Counsel Public Utilities Commission State Capitol Pierre, SD 57501-5070</p> <p>APPEARANCES:</p> <p>Mr. Camron Haseck Staff Attorney Public Utilities Commission 500 East Capitol Pierre, SD 57501-5070</p> <p>For The Public Utilities Commission Staff</p> <p>Mr. William P. Heaston U S WEST Communications 1801 California, Suite 5100 Denver, CO 80202</p> <p>-and-</p>	<p>APPEARANCES: (Continued)</p> <p>Mr. Steve Abris Attorney at Law Box 236 Timber Lake, SD 57426 For Doug Scott</p> <p>Mr. John S. Lovvold Attorney at Law 117 E. Capitol Pierre, SD 57501 -and- Mr. C. Edward Watson Ms. Cheryl L. Urbanski 227 West Monroe Street, 6th Floor Chicago, IL 60606</p> <p>For AT&T and Communications of the Midwest, Inc.</p> <p>Mr. Rochelle Duchesneau Attorney at Law HCR3 Box 86A Gettysburg, SD 57442 -and- Mr. Stanley E. Whiting Attorney at Law Box 48 Winnipeg, SD 57580</p> <p>For The Cheyenne River Sioux Tribe Telephone Authority</p> <p>Mr. Randall Macy Buckmaster & Macy Box 726 Belle Fourche, SD 57717</p> <p>For The West River Telephone Co-op, Bison</p>
Page 421	Page 423
<p>APPEARANCES: (Continued)</p> <p>Mr. Thomas J. Welk Beyer, Murphy, McDowell & Greenfield Post Office Box 5015 Sioux Falls, SD 57117</p> <p>For U S WEST Communications</p> <p>Mr. David Gerdes May, Adam, Gerdes & Thompson Post Office Box 160 Pierre, SD 57501</p> <p>For MCI Telecommunications, Midco Communications, TeleTech, TCIC, FirstTel and Tel Serv</p> <p>Mr. Larry A. Nelson Frieberg, Rudolph & Peterson Post Office Box 38 Canton, SD 57013</p> <p>For The City of Beresford</p> <p>Mr. Thomas P. Maher Maher & Arendt 201 North Euclid, Suite 1 Pierre, SD 57501</p> <p>For The South Dakota Radio Common Carriers</p> <p>Mr. Daniel J. Todd Borrmann, Buckmeier, Bauer & Todd Post Office Box 9 Mobridge, SD 57601</p> <p>For The City of Mobridge and Walworth County</p> <p>Mr. Andrew Lee Fergel Fergel Law Office Post Office Box 17 McIntosh, SD 57641-0017</p> <p>For The McIntosh City Council and Corson County Commission</p>	<p>APPEARANCES: (Continued)</p> <p>Mr. Michael J. Bradley Mann & Burnett 4800 Northwest Center 90 S. Seventh Street Minneapolis, MN 55402</p> <p>For Hansen Communications, Roberts County, Western Telephone Company, Armour Telephone Company and The City of Kenneboc</p> <p>Mr. Brian B. Meyer Ms. Darla Rogers Meyer & Rogers Post Office Box 89 Onida, SD 57564-0089</p> <p>For McCook, Sully Buttes, Golden West, Splitrock, Innervate, Midstate, Stockholm/Strandburg, Valley West River/Hazen</p> <p>Mr. Thomas W. Hertz Ulmer, Hertz & Bertsch Post Office Box 535 Menno, SD 57045-0535</p> <p>For Dakota Co-op and Baltic Telecom</p>

1 INDEX TO WITNESS		Page 424
2 WITNESS	EXAMINATION	
3 BRAD BLUNSON		
4 Direct by Mr. Hoesck	p. 428	
Direct by Mr. Todd	p. 455	
5 Cross by Mr. Welk	p. 474	
Cross by Mr. Gerdes	p. 485	
6 Cross by Mr. Nelson	p. 489	
Cross by Mr. Whiting	p. 491	
7 Cross by Mr. Macy	p. 496	
Cross by Mr. Meyer	p. 499	
8 By Vice-Chairman Burg	p. 503	
Redirect by Mr. Hoesck	p. 507	
9 Redirect by Mr. Todd	p. 508, 519	
Recess by Mr. Fergel	p. 515	
10 Recess by Mr. Whiting	p. 516	
Recess by Mr. Meyer	p. 517	
11		
12 J.D. WILLIAMS		
13 Direct by Ms. Duchesneau	p. 525	
Cross by Mr. Hoesck	p. 553	
14 Cross by Mr. Aberle	p. 669	
Cross by Mr. Gerdes	p. 681	
15 Cross by Mr. Maher	p. 682	
Cross by Mr. Fergel	p. 684	
16 Cross by Mr. Lovald	p. 685	
By Vice-Chairman Burg	p. 693, 703	
17 By Commissioner Schoenfelder	p. 695	
Redirect by Mr. Whiting	p. 702	
18 Recess by Mr. Fergel	p. 704	
Recess by Mr. Hoesck	p. 705	
19		
20 WAYNE AKLUND		
21 Direct by Mr. Nelson	p. 565, 570	
Cross by Mr. Hoesck	p. 566	
22 Cross by Mr. Gerdes	p. 659, 579	
Cross by Mr. Maher	p. 582	
23 Cross by Mr. Lovald	p. 586	
By Commissioner Schoenfelder	p. 594	
24 By Chairman Stofferahn	p. 596, 598	
By Vice-Chairman Burg	p. 598	
25		

1 INDEX TO WITNESS		Page 426
(Continued)		
2 WITNESS	EXAMINATION	
3 LOIS UTTER		
4 Direct by Mr. Fergel	p. 727	
Cross by Mr. Whiting	p. 730	
5 By Vice-Chairman Burg	p. 731	
6 JIM PETIK		
7 By Commissioner Schoenfelder	p. 732	
8 ADELE ENRIGHT		
9 Direct by Mr. Aberle	p. 737	
Cross by Mr. Whiting	p. 746	
10 DOUG SCOTT		
11 Direct by Mr. Aberle	p. 748	
Cross by Mr. Whiting	p. 763	
12 Redirect by Mr. Aberle	p. 768	
13 Recess by Mr. Whiting	p. 769	
14 PAT SPEARS		
15 Personal statement	p. 770	
16 DEAN ANDERSON		
17 Direct by Mr. Meyer	p. 780	
Cross by Mr. Hoesck	p. 783	
18 Cross by Mr. Gerdes	p. 786	
Cross by Mr. Maher	p. 787	
19 Cross by Mr. Lovald	p. 788	
By Vice-Chairman Burg	p. 797	
20 Redirect by Mr. Meyer	p. 798	
21 BOB BARFIELD		
22 Direct by Mr. Meyer	p. 799	
Cross by Mr. Hoesck	p. 802	
23 Cross by Mr. Maher	p. 805	
Cross by Mr. Todd	p. 807, 814	
24 By Chairman Stofferahn	p. 812	
25		

1 INDEX TO WITNESS		Page 425
(Continued)		
2 WITNESS	EXAMINATION	
3 CURTIS KLUDT		
4 Direct by Mr. Nelson	p. 602	
Cross by Mr. Lovald	p. 607	
5 Cross by Mr. Hertz	p. 614	
Cross by Mr. Hoesck	p. 618	
6 By Commissioner Schoenfelder	p. 620	
By Vice-Chairman Burg	p. 622	
7 Redirect by Mr. Nelson	p. 645	
8		
9 PETER LARSEN		
10 Direct by Mr. Nelson	p. 647	
Cross by Mr. Lovald	p. 653	
11 Cross by Mr. Hertz	p. 640	
Cross by Mr. Hoesck	p. 645	
12		
13 ROGER McKELLIPS		
14 Personal statement	p. 647	
Cross by Mr. Gerdes	p. 653	
Cross by Mr. Nelson	p. 654	
15 By Vice-Chairman Burg	p. 663	
By Chairman Stofferahn	p. 665	
16		
17 BOBBIO VILHAUER		
18 Direct by Mr. Fergel	p. 707	
Cross by Mr. Whiting	p. 714	
19 Cross by Mr. Welk	p. 718	
Redirect by Mr. Fergel	p. 719	
20 Recess by Mr. Whiting	p. 720	
By Vice-Chairman Burg	p. 721	
21		
22 RUBEN SPEIDEL		
23 Direct by Mr. Fergel	p. 722	
By Vice-Chairman Burg	p. 725	
24		
25		

Page 427

1 (The hearing reconvened 6-2-95 at the hour of

2 8:30 o'clock a.m.)

3 CHAIRMAN STOFFERAHN: I'll give you the

4 schedule for the day as nearly as we can figure

5 it out. And we're going to have make some

6 changes as time goes on, but we'll try to hold

7 very close to it. I think first off we'll pick

8 up the Department of Revenue people that are

9 here. I think they're witnesses for you,

10 Mr. Todd, and staff may want to do some direct

11 with them also, I think.

12 Number two, CRST and the intervenors will

13 be next, and hopefully we'll hang in there

14 fairly good with the time schedule. I'm sure

15 we won't make it by 9:00, but as soon as we

16 can.

17 And then we want to work in the rest of

18 the Mobridge exchange with Mr. Barfield after

19 that, and we're going to try and recess for

20 lunch right at noon because then we need to

21 take up the Beresford, Alcester case as near to

22 1:00 as we can. And then we want to try and

23 work in West River, Bison before 5:00. And so

24 somewhere in the afternoon we may make some

25 adjustments, but we'll try to hold as close to

1 status?
 2 A. Yes. The tribe receives quite a lot of federal
 3 money, as far as I know.
 4 MR. WHITING: No further questions.
 5 MS. WIEST: Any further cross?
 6 Commissioners? Any redirect?
 7 MR. ABERLE: No.
 8 MS. WIEST: Thank you.
 9 (Witness excused).
 10 MS. WIEST: Any further witnesses?
 11 MR. ABERLE: I would call the intervenor
 12 Doug Scott. I would also move for the
 13 admission Exhibit 143.
 14 MS. WIEST: Any objection to the admission
 15 of Exhibit 143? Hearing none, it's been
 16 received.
 17 DOUG SCOTT,
 18 called as a witness, being first duly sworn,
 19 testified as follows:
 20 DIRECT EXAMINATION BY MR. ABERLE:
 21 Q. Would you tell the Commission your name and
 22 address?
 23 A. My name is Doug Scott. I'm from rural Timber
 24 Lake, South Dakota.
 25 Q. How old are you, Doug?

1 A. Fifty-seven.
 2 Q. How long have you lived in the Timber Lake
 3 area?
 4 A. Basically all my life, except for a couple
 5 years when I was gone in the service and a
 6 couple more years I was off work in
 7 construction.
 8 Q. Are you married?
 9 A. Yes.
 10 Q. How many children do you have?
 11 A. Five.
 12 Q. Would you briefly describe to the Commission
 13 the work history that you have had and the
 14 occupations you've been involved in?
 15 A. At the present time I'm a farmer/rancher. When
 16 I returned from the service, I went to work for
 17 Moreau Grand Electric, the electric co-op up
 18 there at Timber Lake. I worked for them for
 19 several years. Then I worked construction for
 20 four or five years.
 21 Q. What did you do for the rural electric?
 22 A. I was a line man, started off as a line man,
 23 climbed poles, did maintenance work.
 24 Q. Would you continue?
 25 A. Then I bought a small power line construction

1 outfit and run that until '81. Then I went
 2 back to farm and ranching full time.
 3 Q. So you've had — have you been involved in any
 4 businesses in the Timber Lake area?
 5 A. Yes. I've been part owner of the elevator
 6 there. I own a rental property in Timber
 7 Lake.
 8 Q. And is that within the City of Timber Lake
 9 proper?
 10 A. Yes.
 11 Q. Would it be safe to say you've had a fairly
 12 extensive amount of experience with rural
 13 electric cooperatives in the respect that they
 14 are a utility?
 15 A. Yes.
 16 Q. Are you familiar with their requirements for
 17 coming up with capital and their general
 18 operations?
 19 A. Yes.
 20 Q. What is your general feeling as far as whether
 21 or not the rural electric co-ops have served
 22 the public interest?
 23 A. I think they've done a good job of serving the
 24 rural interest. They filled a vacuum that was
 25 really needed back in the earlier days, and I

1 think they've done basically a good job.
 2 Q. Why have they been able to do that?
 3 A. Well, I think a lot of it is local input, local
 4 control by the people they serve.
 5 Q. Why is that important?
 6 A. Well, I think they — they're in touch with the
 7 people. They know what they want. They know
 8 what they need. They live in the communities,
 9 and they have to respond. The neighbors are
 10 the ones that they've got to keep happy.
 11 Q. Do you think it's important that their
 12 directors are also rate payers?
 13 A. Yes.
 14 Q. You've intervened in the proposed sale of the
 15 Timber Lake exchange to the Cheyenne River
 16 Telephone Authority. Why have you done that?
 17 A. Basically for four reasons. The input, local
 18 input, the taxes, the rates, and the PUC
 19 control.
 20 Q. I believe the first one you kind of testified
 21 to a little bit about, as far as rural electric
 22 co-ops. But what is your understanding about
 23 the proposed sale to the Cheyenne River
 24 Telephone Authority and local input?
 25 A. Well, I understand we will not have any local

1 going to be there?
 2 Q. Let's assume J.D. Williams will do what he said
 3 he would do. Let's assume hypothetically such
 4 a system is set up. Would that help?
 5 A. Yes, that would help.
 6 MR. WHITING: That's all I have.
 7 MS. WIEST: Any further cross?
 8 Commissioners? Redirect?
 9 MR. ABERLE: Yes.
 10 REDIRECT EXAMINATION BY MR. ABERLE:
 11 Q. Have you voted in public utility races before?
 12 A. No.
 13 Q. Have you voted in the general elections when
 14 public utility commissioners have been
 15 running?
 16 A. Oh, yes, yes.
 17 Q. Do you feel comfortable Public Utilities
 18 Commission can control monopolies such as
 19 U S WEST as far as their rates and getting out
 20 of hand?
 21 A. Yes.
 22 Q. As far as cooperative situations, as far as
 23 rural electrics and that type, do you believe
 24 the members have that type of control over the
 25 board of directors of those types of

1 cooperatives?
 2 A. Yes, I do.
 3 Q. Do you feel that that type of mechanism is in
 4 place where if the rates would go up 50, 75
 5 percent under the new Owl River, that the 80
 6 percent or more of the population in the Timber
 7 Lake exchange could take and vote someone out
 8 of office on the tribal council and correct any
 9 types of abuses, overspending or
 10 mismanagement?
 11 A. No.
 12 MR. ABERLE: No further questions.
 13 MS. WIEST: Any recross?
 14 RECROSS-EXAMINATION BY MR. WHITING:
 15 Q. You would agree, though, with me that if the
 16 tribe is going to abuse consumers on the rates,
 17 they would be abusing their own members, also?
 18 A. Right. I agree with that.
 19 Q. You haven't seen that happen, have you?
 20 A. No.
 21 MR. WHITING: That's all.
 22 MS. WIEST: Do you have an objection to
 23 the Petition, Miss Ducheneaux?
 24 MS. DUCHENEAUX: No.
 25 MS. WIEST: What's the exhibit number?

1 MS. CREMER: 143.
 2 MS. WIEST: Anyone else want to see the
 3 Petition or have an objection to that? If not,
 4 that is admitted.
 5 (Witness excused).
 6 MS. WIEST: If there's any public
 7 testimony for or against the exchanges, you can
 8 come forward now.
 9 PAT SPEARS,
 10 called as a witness, being first duly sworn,
 11 testified as follows:
 12 PAT SPEARS: Good afternoon, members,
 13 Commissioners, employees of the Telephone
 14 Authority and ladies and gentlemen here and the
 15 other interested parties. My name is Pat
 16 Spears, and I'm here in support of the Cheyenne
 17 River Telephone Authority and their plans to
 18 purchase the Timber Lake, Morristown and
 19 McIntosh exchanges.
 20 I am Lakota and a member of the Lower
 21 Brule Tribe, which is down river from
 22 Ft. Pierre. I'm a graduate of the University
 23 of South Dakota and a formal tribal chairman of
 24 my tribe. My background also includes graduate
 25 study at the University of Southern Colorado at

1 the Washington Public Affairs Center in
 2 Washington, D.C., and I have some experience in
 3 intergovernmental affairs and management, as I
 4 have also worked at state and federal levels in
 5 addition to the work for my tribe as a planner,
 6 also.
 7 I'd like to communicate a few of the
 8 observations that I have in regard to
 9 telecommunications due to some of my work
 10 experience. I've been doing some consultant
 11 work over the past couple years that has
 12 focused quite a bit on telecommunications.
 13 The tribes of the northern plains are
 14 aware of the dramatic changes in technology and
 15 telecommunications in use today and will change
 16 the way we live and learn and do business in
 17 the future.
 18 I've been doing consultant work for
 19 Presentation Health System and the Aberdeen
 20 Tribal Chairmens' Health Board. This work
 21 includes exploring the benefits of
 22 tele-medicine and health education through
 23 linking of Indian Health Service and tribal
 24 hospitals and clinics to major medical
 25 centers.

1 Access to health care, particularly
2 specialty health care, is a critical issue for
3 rural people.
4 Some of the applications of tele-medicine
5 are two-way interactive video conferencing for
6 consultations among physicians and nurses, in
7 mental health, radiology, cardiology, emergency
8 room linkage, store and forward technology,
9 laboratory, pathology, and internal medicine
10 endoscopy are some of the applications used
11 today. The Aberdeen Area Tribal Chairmens'
12 Health Board and Indian Health Service are
13 exploring the options available, and those that
14 need further planning.

15 Many of us believe there's great potential
16 to improve access and quality of health care
17 for both Indians and non-Indian people in rural
18 areas of the northern plains. Access to
19 educational resources is also a need for rural
20 areas. Through technology distance-learning is
21 not only possible, it's been happening all over
22 America and for South Dakota for some time.
23 The tribal colleges have plans to provide
24 educational services to reservation
25 communities, link up with each other and the

1 rest of the world to both tap into other
2 educational networks and share tribal knowledge
3 with the global community.

4 Tribal colleges and universities have been
5 referred to as the best kept secret in South
6 Dakota. Up to one-third of their enrollment
7 are non-Indian people both on and off the
8 reservation and across state lines. I might
9 add that they're doing this on shoestring
10 budgets that are well below that of national
11 and South Dakota averages. This resource will
12 only improve technology and improvements in
13 telecommunications.

14 Telecommunications is estimated it will
15 impact education in the future in a big way.
16 Those estimates range from 33 to 100 percent of
17 the teaching will employ technology over the
18 next five to 12 years.

19 As outlined in the national performance
20 review and the heavy emphasis by Congress on
21 services and procurement management of the
22 federal government, technology should and will
23 be employed to communicate and deliver services
24 in a more efficient manner.

25 Tribal and state governments must keep

1 pace with the trends in doing business in the
2 public and private sectors through the
3 development of infrastructure and the
4 deployment of network technologies for the
5 accessing of information and providing needed
6 services.

7 The new telecommunications legislation is
8 moving through Congress now at a very rapid
9 pace. It promises to change a delivery of
10 telecommunications services through the
11 definition of universal access and increased
12 competition. The Senate amendments speak to
13 lower rates for health and education.

14 With health and education at the forefront
15 of telecommunications, economic development
16 will follow. At some point we will realize
17 cost savings through delivery services in the
18 air, over the wires and in cyberspace. Our
19 people will have more opportunities for
20 employment as information managers and
21 technicians in the delivery of
22 telecommunications services.

23 A skilled work force will attract new
24 business opportunities and information
25 management. The tribes have had limited

1 success in bringing manufacturing industry to
2 the reservations. However, they may compete
3 for their marketing and information processing
4 relative to product sales, as well as
5 non-Indian communities. That opportunity will
6 be there at some point in the future.

7 All these potential benefits may not be
8 realized without the infrastructure in place
9 that has the capacity and technology to access
10 information and provide the services, which is
11 why we're here today.

12 The Cheyenne River Telephone Authority is
13 aware of those needs of all our people, and
14 they share the vision of the future benefits of
15 telecommunications and technology. They've
16 been laying fiber and using digital technology
17 in communications transmission since 1986.
18 Their long-range plans include working with
19 each community of interest to plan for the
20 coming of tele-medicine and distance learning
21 and tribal services.

22 Communities of interest, besides the
23 existing communities on reservations within the
24 boundaries, also mean the Indian Health Service
25 and Bureau of Indian Affairs, the tribal

Page 776

Page 778

1 government, tribal colleges and any individual
2 businesses that may be there or be planned in
3 the future. All of those entities I think need
4 to be involved in the planning and on a team
5 and begin to work together.

6 We are literally at the last mile of
7 connectivity, as referred to in the
8 communications industry, and that linkup and
9 that infrastructure is crucial to us accessing
10 information and providing an on-ramp to the
11 information super highway for such things as
12 Internet access, which can be used in all the
13 ways I've mentioned before. It can benefit in
14 health, education and economic development.

15 I think the track record of Cheyenne River
16 Telephone Authority is exemplary. The
17 provision of telephone service is only one of
18 the business interests that they have. They
19 also manage a propane gas company, cable TV,
20 direct broadcast satellite service and now a
21 grocery store and restaurant. Their expansion
22 and diversity speak to their vision and ability
23 to provide services and jobs for reservation
24 people in two of the poorest counties in the
25 United States.

1 the Cheyenne River Sioux Tribe are a sovereign
2 entity with a government-to-government
3 relationship with the United States Government
4 and the State of South Dakota.

5 It's good to remind people of a little
6 history to put things in perspective.
7 Depending on your perspective in legal
8 knowledge, this land either was or still is
9 Lakota land as affirmed by treaty in 1824, 1851
10 and 1868. According to the last treaty of
11 1868, our land begins at the east bank of this
12 Missouri River. It encompasses all of western
13 South Dakota and portions of Nebraska, Wyoming,
14 Montana and North Dakota.

15 This hasn't been all that long ago that
16 this has happened, and how we ended up at the
17 islands of tribal land we have left, which are
18 checkerboarded with regard to the ownership, as
19 has been attested to here, it's certainly
20 debatable, and that the votes to cede any land
21 was questionable and is a matter of Court
22 record where it was entered on as exhibits, but
23 never really ruled on.

24 However little land the tribes have left,
25 they still have the right and responsibility to

Page 777

Page 779

1 Now they intend to extend these services
2 to Corson County, which is also in the top 10
3 of the poorest counties in the United States.
4 The exchanges in rural South Dakota would not
5 be for sale if they did not need improvement,
6 in my opinion. The Cheyenne River Sioux Tribe
7 is planning to do that. They plan to connect
8 two reservations, the Standing Rock and
9 Cheyenne River Lakota tribes reside there, and
10 all the communities that are within those
11 boundaries and are served with those
12 exchanges.

13 I think this is a great idea.
14 Interconnectivity and networking are
15 improvements in communication. Sharing
16 information access, education and health care
17 must be planned carefully and in concert with
18 those that are affected. They are more than
19 willing to discuss the improvements in service,
20 rate issues and taxation. The fact that
21 they're here today speaks to that willingness
22 before you, the Commission, and the public
23 here.

24 Whether or not they have to is a legal
25 question. The Lakota bands that are known as

1 govern, provide services, including civil
2 authority over non-Indians within the
3 boundaries of the reservation. These rights
4 are affirmed by U.S. Constitution and numerous
5 decisions in the Court system, the U.S. Supreme
6 Court and the Congress of the United States.

7 I mention these facts because I believe
8 they should be respected. We all live here in
9 this area of land. We all have the same
10 needs. We're all able to work together to
11 resolve concerns through agreements. We all
12 can work together for a common good for our
13 people. We are all from the same creation.
14 Pilaymiya. I thank you.

15 MS. WIEST: Any cross of this witness?
16 Commissioners? Thank you.

17 (Witness excused)

18 MS. WIEST: We'll take a 10-minute break.

19 (A recess was taken.)

20 CHAIRMAN STOFFERAHN: Let's go back on the
21 record.

22 MS. WIEST: Mr. Meyer?

23 MR. MEYER: At this time we'll call Dean
24 Anderson.

25 DEAN ANDERSON,